## PROGRESS OF THE LAW.

### As Marked by Decisions Selected from the Advance Reports.

AGREEMENT TO SELL LAND.

**Mutuality of Mistake**

In *Murphy* v. *Clarkson,* 66 Pac. 51, the Supreme Court of Washington holds that where owners of land appointed a member of the firm as their agent to sell the land, and thereafter the latter's partner agreed to sell the same to the plaintiff, the agreement being made in the firm name by mistake, in the absence of a showing that the mistake was mutual, and that the plaintiff was fraudulently misled, or could not by the exercise of reasonable diligence have discovered the facts, the owners will not be liable on their refusal to convey.

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ATTORNEY AND CLIENT.

**Settlement of Suit**

In *Rose* v. *Fretz,* 109 Fed. 810, the United States Circuit Court (E. D. Pennsylvania), holds that the knowledge of a defendant, in a suit for the infringement of a patent, that the complainant's attorney is to receive one-half the proceeds of the suit, does not charge him with notice that the agreement therefor is in writing, and so executed as to operate as an equitable assignment of an interest in the patent, nor put him on inquiry as to its terms; and a settlement made by him with complainant, without actual notice of such facts, and by which he receives a release executed by the record owners of the patent, is valid and binding.

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BANKRUPTCY.

**Debts not Released**

A judgment recovered in a state court for seduction of the plaintiff's minor daughter, which must be based on loss of services, but also includes damages for personal injuries to the plaintiff through being subjected to mental anguish, disgrace, etc., is one for a "willful and malicious injury to the person or property of another," within the meaning of the Bankruptcy Act of 1898, and is not released by a discharge of the defendant in bankruptcy: United States District Court (D. New Jersey). *In re Freche,* 109 Fed. 620.

BANKRUPTCY (Continued).

Under the law of Pennsylvania, a debtor must select his exemption of $300 from the property owned by him, and a bankrupt in that state cannot, by agreement with his trustee, omit such selection, and claim the amount of his exemption from the proceeds of the property after its sale: *In re Haskin,* 109 Fed. 789 (United States District Court, E. D. Pennsylvania).

**Exemption in Pennsylvania**

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DAMAGES.

The New York Supreme Court (Appellate Term) holds in *Sheuer* v. *Monash,* 71 N. Y. Supp. 818, that a contract for services, invalid under the statute of frauds, because not to be performed within a year, is admissible in evidence as a measure of the value of the services rendered.

**Contract, Statute of Frauds**

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HOMICIDE.

In *Musser* v. *State,* 61 N. E. 1, the Supreme Court of Indiana holds that where two are jointly indicted for murder, declarations of one shown to have been engaged in the conspiracy are admissible against the other, though the other declarent has been acquitted. On the other hand, where these two persons jointly indicted, were separately tried, the record of the acquittal of one is not admissible in evidence on the trial of the other.

**Defendants Jointly Indicted, Declarations**

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MASTER AND SERVANT.

A telegraph company is liable to a bank for the loss occasioned to the latter by its payment of money, without negligence, on a message purporting to have been sent by another bank, but which was in fact concocted and forged by an operator employed by the telegraph company, whose duty it was to send messages, and who sent such message in the usual manner over the company's line, and through its regular agents. In such case, the U. S. Circuit Court of Appeals (Ninth Circuit) holds the act of the operator in sending the false message, although criminal and unauthorized by the company, was within the apparent scope of his employment, and the company was liable therefor: *Pacific Postal Tel. Cable Co.* v. *Bank of Palo Alto,* 109 Fed. 369.

**Liability for Torts**

MUNICIPAL CORPORATIONS.

**Negligence in Enforcing Ordinance**

In *Mayor etc. of Hagerstown* v. *Klotz,* 49 Atl. 836, the Court of Appeals of Maryland holds sufficient a declaration which states that the defendant city passed an ordinance making the riding of bicycles on the streets above a certain rate of speed unlawful, but that the defendant negligently failed to enforce such ordinance, but permitted it to become a dead letter and that the plaintiff, while crossing a certain street in the city was knocked down by a bicycle going at an immoderate rate of speed, and was injured owing to the defendant's neglect of duty. It can relieve itself from liability, the court holds, only by a vigorous attempt to enforce such ordinance.

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OBSTRUCTING AN OFFICER.

**Attachment**

The Supreme Court of Errors of Connecticut in *State* v. *Hartley,* 49 Atl. 860, holds that where, after an officer who had attached goods had parted with the possession, a drayman was employed by the owner to haul them away, the officer had not a right to take them from the drayman without a new attachment; and that hence an instruction that the drayman might be found guilty of obstructing an officer in the discharge of his duty, if the officer attempted to take possession of the goods while on the wagon, and the defendant obstructed him in so doing, was erroneous.

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PARTITION.

**Church Property**

An interesting question arises in *LeBlanc* v. *Lemaire,* 30 Southern, 135, the dispute being as to whether church property, part of which is a church site, with buildings, and another part a burial ground, owned as per deed of record, by an incorporated religious society, is subject to partition at the instance of a minority of the congregation among those who at the time claim membership in the church. With one judge dissenting, the Supreme Court of Louisiana holds that the congregation have no right to break up the church by forcing the sale of its property for purpose of partition on the plea of being owners in "indivision." While, it is said, they may have certain property rights in the church holdings, they are not con-

PARTITION (Continued).

sidered such owners in "indivision" as gives them a standing in court to provoke against the will of the majority a partition of that which by common understanding was intended to remain intact for the purpose of religious worship.

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REPLEVIN.

Goods in Custody of Law

The rule that goods in the custody of the law may not be replevined is well established. In *Taylor* v. *Ellis,* 49 Atl. 946, the Supreme Court of Pennsylvania holds that they are in such custody even after the claimant has given a bond therefor, and hence that though such bond has been given replevin will not lie. It is further held that the assignee of creditors of one whose goods have been seized on execution may, though voluntarily intervening as defendant in a replevin suit therefor by a claimant thereof, make the objection that the replevin suit is void

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SEDUCTION.

Betrothal, Special Promise

It seems established that if the moving cause of a woman's consent to illicit intercourse be a promise of marriage conditional upon her pregnancy the defendant cannot be found guilty of seduction. This principle is extended by the New York Supreme Court (Appellate Division, Second Department) in *People* v. *Ryan,* 71 N. Y. Supp. 527, where it is held that there is no seduction if the prosecutrix submitted in reliance on the defendant's special promise of marriage in the event of pregnancy, though the parties were engaged to marry at the time of the special promise.

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SALES.

Knowledge of Unlawful Intent

The Supreme Judicial Court of Massachusetts holds in *Graves* v. *Johnson,* 60 N. E. 383, that where intoxicating liquors are sold in that state with intent by the buyer to resell them in another state (which in Massachusetts is contrary to law) the seller's mere knowledge of the buyer's intent will not prevent his recovering the purchase price. The general rule seems to require an intent to aid in the accomplishment of the illegal

SALES (Continued).

purpose. But in the English case of *Pearce* v. *Brooks,* L. R. 1 Ex. 213, a coach builder was denied recovery where he had let out to a prostitute a brougham for the furtherance of her immoral trade, knowing the intended use, and later sued for the hire thereof. See *Anson on Contracts,** 209.

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SALE OF LAND.

In *Westfalls* v. *Washlagel,* 49 Atl. 941, the Supreme Court of Pennsylvania holds that under the Act of April 22, 1856, providing that no exception in any act respecting the limitation of actions shall extend so as to permit any person to maintain an action for recovery of land after thirty years from the accrual of the right of entry, a person with a recorded deed to vacant and unfenced lots, who has for over forty years continuously exercised the rights of ownership, paying taxes and assessments, and filling the lots to grade level has a marketable title, notwithstanding a prior deed to a person who has never exercised any rights of ownership or claimed any right in or to the lot.

**Marketable Title**

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SPECIFIC PERFORMANCE.

A contract for the sale of a plantation as a going concern, including stock, implements and supplies, for a fixed sum, may be specifically enforced in equity as an entirety: United States Circuit Court (District of South Carolina) in *Brown* v. *Smith,* 109 Fed. 26. "True," says the court, "a large part of the contract was for personalty. But this personalty was part and parcel—an essential part—of the plantation. With the land the personalty made the subject matter of the contract a unit, gave enhanced value to the land; indeed, was inseparable from it as a going concern."

**Contract for Sale of Realty and Personalty**

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TRUSTS.

*In re Winchester's Estate,* 65 Pac. 475, the Supreme Court of California holds that a regularly organized but unincorporated educational society, governed by a constitution and regularly elected officers, can take a bequest by will. The argument was strenuously urged that the trustee was too indefinite to be held to the per-

**Definiteness of Trustees**

TRUSTS (Continued).

formance of the trust, but the court declines to adopt this view and decides that these bodies, though unincorporated, "have been considered so far under the control of a court of equity that they would be compelled to execute the duties of the trust imposed upon them and could be dealt with for a breach."

**Application of Income, Creditors**

In *Everett* v. *Peyton,* 60 N. E. 425, it appeared that the husband of the testatrix had contested, on the ground of incapacity, the validity of a codicil which revoked provisions of a will creating a trust fund for his benefit. A compromise was entered into, with the approval of the surrogate, by which it was agreed that the amount as specified in the will should be invested and the income paid to him for a period not to exceed five years, the other provisions of the will and the codicil to be exchanged and the will to be admitted to probate. Later the creditors of the husband sought to satisfy their debts out of the income of the money invested according to the agreement. But the Court of Appeals of New York holds that the income of the money invested by the trustees in pursuance of the compromise is to be considered as proceeds of the trust fund under the will, and not subject to judgments against him, where it is no more than necessary for his support. The Chief Justice and one of the other judges dissent.

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VERDICT.

**Undue Influence**

A jury after deliberation for a reasonable time, stood three for the defendant and nine for the plaintiff, and the three who were favorable to the defendant signed a written agreement to the effect that they would find for the plaintiff if the other nine would sign a written statement to the effect that they believed the defendant had wilfully testified to a lie; and the other nine, in order to induce the three to agree with them, did prepare and sign a written statement that they so believed. The three thereupon gave in, and the jury returned a verdict for the plaintiff. The Supreme Court of Oklahoma holds in *Williams* v. *Pressler,* 65 Pac. 934, that such a verdict was not the result of free, deliberate and unbiased judgment, and not being so, must be set aside.